



SAN CARLOS APACHE TRIBE

Office of the Attorney General

Post Office Box 40

San Carlos, Arizona 85550-0040

Tel. (928) 475-3344 or 3339 ❖ Fax (928) 475-3348 ❖ E-Mail alex.ritchie@scat-nsn.gov

November 28, 2017

Via E-Mail

Loretta Vanegas
Water Tribal Section (W-3-4)
Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
E-M: vanegas.loretta@epa.gov

Dear Ms. Vanegas:

I am the Attorney General for the San Carlos Apache Tribe (the "Tribe"), and provide legal counsel to the Tribe, its elected officers, employees and agencies. This legal opinion is provided in answer to the U.S. Environmental Protection Agency's comments on the Tribe's Water Quality Standards Tribe-As-State ("WQS TAS") application, as received by Loretta Stone, Director of the Tribe's Environmental Protection Agency on June 21, 2017. Unfortunately, while Ms. Loretta Stone received the EPA's comments on June 21 and the Tribe was to respond by September 30, 2017, our Office did not receive your correspondence until November 15th. It is my understanding that Ms. Stone was waiting on additional information from the Tribe's consultant, Dr. Stephen Johnson, and thus our response could not be prepared sooner due to circumstances beyond our control. It is my further understanding that the Tribe was granted a no cost extension, for which I provide our gratitude.

Accordingly, for the purposes of this opinion, capitalized terms used, but not defined, in this opinion letter shall have the meanings ascribed to them in the grant application documents.

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As used in this opinion, the phrase “to my knowledge,” means, as to matters of fact, that, such matters are factually correct to my knowledge and after an examination of the documents identified below, but without any independent factual investigation or verification of any kind other than inquiries of certain officers of the Tribe.

In order to provide this opinion, I examined the following documents (collectively, the “Documents”) and made no other investigation or inquiry:

- ❖ Amended Constitution and Bylaws of the San Carlos Apache Tribe
- ❖ Resolutions and Ordinances of the San Carlos Council
- ❖ Applicable federal law

Based on the foregoing, and subject to the assumptions, qualifications and limitations set forth below, it is my opinion that to my knowledge:

The Tribe is a federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). The Tribe is a duly formed tribal government in good standing with all of the rights, powers, privileges, duties, and obligations of a tribal government. This includes the authority of applying to execute and deliver its obligation under the EPA’s WQS TAS application and any subsequent agreement therefor, if approved.

In answer to your first comment, regarding information previously submitted in the CWA 106 TAS application, there have not been significant changes relating to the form of the Tribe’s government. The Tribe’s functions remain as essential government services, which, inter alia, include the provision of health and welfare obligations to its enrolled members, and these have not changed since the previous application was submitted.

In answer to your comment 2(a), requesting a detailed map or legal description of reservation, such as a map based on an official survey by the U.S. Department of Interior, or official reservation map prepared by the BIA, attached, as Exhibit 1, please find a map of the San Carlos Apache Indian Reservation, which covers an area of approximately 2,855 square miles or 1.8 million acres, as established and subsequently diminished by several Executive Orders and Acts of Congress culminating with Executive Order January 26 and March 31, 1877 and the Act of June 7, 1897 (30 Stat. 64), the exterior boundaries of which constitute the extent of the Tribe’s regulatory authority over waters occurring on the Reservation.

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Furthermore, as to your comment 2(b), all lands within the exterior boundaries of the Tribe's Reservation are held in trust by the United States for the benefit of the Tribe; there are no fee lands. *See* 25 U.S.C. §177.

In response to your comment 3, since the Tribe's WQS TAS application was submitted prior to the EPA's interpretive rule revising the Agency's approach to tribal jurisdiction under the Clean Air Act. *See* 81 FR 30183 (May 16, 2016), this opinion supplements the Tribe's application to assert authority under this new approach.

The Tribe's Amended Constitution and Bylaws (February 24, 1954), especially Article V, Sections 1(a), (f) and (i), as attached, demonstrate the Tribe's exercise of authority in general over the reservation. In addition, pursuant to the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4740) and the Globe Equity No. 59 Decree, *inter alia*, the Tribe has certain water rights, which include those waters within the exterior boundaries of the Tribe's Reservation. Finally, the Tribe has adopted certain water quality standards, pursuant to San Carlos Council Resolution No. DC-13-278, also attached, which amount to regulations over the waters on the Reservation and these stand within the Tribe's water rights.

The basis for the Tribe's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, *Revised Interpretation of Clean Water Act Tribal Provision*, 81 FR 30183, May 16, 2016.

There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress as described in this application.

This concludes my legal opinion as to the Tribe's EPA WQS TAS application. Should you have any further questions, please contact me.

Sincerely,



A.B. Ritchie
Attorney General

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Enclosures:

Exhibit 1 – Amended Constitution and Bylaws (February 24, 1954)

Exhibit 2 – San Carlos Apache Reservation Map

Exhibit 3 – San Carlos Council Resolution No. DC-13-278

Cc: Terry Rambler, Chairman

Tao Etpison, Vice Chairman

San Carlos Council Members

Loretta Stone, Dir., TEPA

Emogene Casey, Env. Specialist, TEPA

A.B. Ritchie, AG, OAG

Stephen Johnson, PhD, Water Quality Environmental, Inc., wqe2016@gmail.com

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